

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Low

(Coauthors: Assembly Members Bigelow, Calderon, Cooper, Dababneh, Gatto, Jones, Jones-Sawyer, Lackey, Mathis, Mullin, Olsen, Rodriguez, Waldron, and Wilk)

(Coauthors: Senators Anderson, Berryhill, Block, Hill, Mendoza, Morrell, Nguyen, and Vidak)

February 2, 2016

An act to amend Section 21628 of, to repeal Section 21628.1 of, and to repeal and add Section 21630 of, the Business and Professions Code, relating to secondhand goods, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as amended, Low. Secondhand goods.

Existing law provides for the regulation of secondhand dealers and coin dealers, as defined. Existing law makes it unlawful for a person to engage in the business of a secondhand dealer without a license issued by the chief of police, the sheriff, or, where appropriate, the police commission. Existing law requires a local law enforcement agency to issue a license to engage in the business of a secondhand dealer or pawnbroker to an applicant who meets designated criteria. Existing law authorizes the local licensing authority and the Department of Justice to charge an initial licensure fee and a renewal fee, as specified. Existing law requires a secondhand dealer to report, as specified, to the chief of

police or sheriff all secondhand “tangible personal property,” as defined, purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning. Existing law requires the report to include, among other things, the identification of the intended seller or pledger of the property, verified by the person taking the information by specified methods. Existing law requires the reporting of this information to the Department of Justice through a single, statewide, and uniform electronic reporting system. Existing law requires the Department of Justice to develop descriptive categories and secondhand dealers and coin dealers to use these categories in their reports.

This bill would eliminate the requirements that the Department of Justice develop, and secondhand dealers and coin dealers use, descriptive categories in their reports of acquired tangible personal property. Instead, the bill would require the Department of Justice to accept the plain text property descriptions commonly recognized and utilized by the pawn and secondhand dealer industries. The bill would require the Department of Justice to encode the plain text property descriptions, as specified, and would prohibit the Department of Justice from using funds collected from the initial licensing fee for these purposes. This bill would prohibit the Department of Justice, chiefs of police, and sheriffs from requiring secondhand dealers to report any additional information other than that which is required by these provisions. The bill would require that the single, statewide, and uniform electronic reporting system be implemented and operated in compliance with the Administrative Procedure Act and prohibit the Department of Justice from taking any action with respect to the implementation, operation, or maintenance of the electronic reporting system by adoption of an emergency regulation. *The bill would also require the Department of Justice to convene a meeting with the Department of Technology to discuss issues pertaining to any proposed changes or upgrades, and authorize the Department of Technology to provide technological assistance for ongoing improvements, updates, or changes, to the single, statewide, and uniform electronic reporting system.*

Existing law provides an exception to the reporting requirement for the acquisition of the same property from the same customer within 12 months of a reported transfer, except when submission of the report is specifically requested in writing by the local authorities.

This bill would expand the reporting requirement exception to all acquisitions of the same property from the same customer within 12 months of a reported transfer.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to clarify
2 that pawnbrokers and other secondhand dealers are to report their
3 acquisition of tangible personal property received in pledge, trade,
4 consignment, or auction or by purchase using plain text, in
5 descriptive language historically used in the pawn and secondhand
6 industries when reporting to the single, statewide, and uniform
7 electronic reporting system operated by the Department of Justice,
8 or if not yet implemented in their respective jurisdictions, on paper
9 forms sent to the local police chief or sheriff of the jurisdiction in
10 which the secondhand dealer is physically located.

11 (b) It is further the intent of the Legislature that by specifying
12 this manner of reporting, it will relieve all secondhand dealers and
13 pawnbrokers of the inherent costs and burdens imposed under
14 existing law that requires these businesses to report their daily
15 acquisitions of secondhand tangible personal property on paper
16 forms limited to a single transaction, or where the electronic
17 reporting system is implemented, the cost associated with
18 converting industry standard descriptions to specific law
19 enforcement categories, the ongoing costs of training to that
20 standard, and the costs of implementing software to maintain that
21 standard.

22 (c) Further, it is the intent of the Legislature that the Department
23 of Justice shall continue to accept the plain text descriptive
24 language historically used in the pawn and secondhand industries
25 and shall have the continuing obligation to convert those
26 descriptions as may be required by law enforcement databases in
27 order to protect the integrity of law enforcement databases. It is
28 the intent of the Legislature that only properly trained law
29 enforcement personnel of the Department of Justice or local law
30 enforcement classify and encode for law enforcement databases
31 property reported by pawnbrokers and secondhand dealers and
32 that the cost of the classification or the training of law enforcement
33 personnel not be funded by pawnbrokers or secondhand dealers.

SEC. 2. Section 21628 of the Business and Professions Code, as amended by Section 1 of Chapter 169 of the Statutes of 2015, is amended to read:

21628. (a) Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of secondhand tangible personal property, on forms or through an electronic reporting system approved by the Department of Justice, all secondhand tangible personal property, except for firearms, which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the electronic reporting system operated by the Department of Justice, or until such time as this system is operational in the jurisdiction where the secondhand dealer is located, on paper forms sent to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633 and subdivision (d). The report shall be legible, prepared in English, completed where applicable, and include only the following information:

(1) The name and current address of the intended seller or pledger of the property.

(2) The identification of the intended seller or pledger. The identification of the seller or pledger of the property shall be verified by the person taking the information, who may use technology, including, but not limited to, cameras or software, or both, to obtain information and verify identity remotely. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

(A) A passport of the United States.

(B) A driver's license issued by any state or Canada.

(C) An identification card issued by any state.

(D) An identification card issued by the United States.

(E) A passport from any other country in addition to another item of identification bearing an address.

(F) A Matricula Consular in addition to another item of identification bearing an address.

1 (3) (A) A complete and reasonably accurate description of
2 serialized property, including, but not limited to, the following:
3 serial number and other identifying marks or symbols,
4 owner-applied numbers, manufacturer's name brand, and model
5 name or number. Watches need not be disassembled when special
6 skill or special tools are required to obtain the required information,
7 unless specifically requested to do so by a peace officer. A special
8 tool does not include a penknife, caseknife, or similar instrument
9 and disassembling a watch with a penknife, caseknife, or similar
10 instrument does not constitute a special skill. In all instances where
11 the required information may be obtained by removal of a
12 watchband, then the watchband shall be removed. The cost
13 associated with opening the watch shall be borne by the
14 pawnbroker, secondhand dealer, or customer.

15 (B) In the case of the receipt or purchase of a handheld electronic
16 device by a secondhand dealer, the serial number reported pursuant
17 to subparagraph (A) may be the International Mobile Station
18 Equipment Identity (IMEI), the mobile equipment identifier
19 (MEID), or other unique identifying number assigned to that device
20 by the device manufacturer. If none of these identifying numbers
21 are available by the time period required for reporting pursuant to
22 this subdivision, the report shall be updated with the IMEI, MEID,
23 or other unique identifying number assigned to that device by the
24 device manufacturer as soon as reasonably possible but no later
25 than 10 working days after receipt or purchase of the handheld
26 electronic device.

27 (C) For the purpose of this paragraph, "handheld electronic
28 device" means any portable device that is capable of creating,
29 receiving, accessing, or storing electronic data or communications
30 and includes, but is not limited to, a cellular phone, smartphone,
31 or tablet.

32 (4) A complete and reasonably accurate description of
33 nonserialized property, including, but not limited to, the following:
34 size, color, material, manufacturer's pattern name (when known),
35 owner-applied numbers and personalized inscriptions, and other
36 identifying marks or symbols. Watches need not be disassembled
37 when special skill or special tools are required to obtain the
38 required information, unless specifically requested to do so by a
39 peace officer. A special tool does not include a penknife, caseknife,
40 or similar instrument and disassembling a watch with a penknife,

1 caseknife, or similar instrument does not constitute a special skill.
2 In all instances where the required information may be obtained
3 by removal of a watchband, then the watchband shall be removed.
4 The cost associated with opening the watch shall be borne by the
5 pawnbroker, secondhand dealer, or customer.

6 (5) A certification by the intended seller or pledger that he or
7 she is the owner of the property or has the authority of the owner
8 to sell or pledge the property.

9 (6) A certification by the intended seller or pledger that to his
10 or her knowledge and belief the information is true and complete.

11 (7) A legible fingerprint taken from the intended seller or
12 pledger, as prescribed by the Department of Justice. This
13 requirement does not apply to a coin dealer, unless required
14 pursuant to local regulation.

15 (b) (1) When a secondhand dealer complies with all of the
16 provisions of this section, he or she shall be deemed to have
17 received from the seller or pledger adequate evidence of authority
18 to sell or pledge the property for all purposes included in this
19 article, and Division 8 (commencing with Section 21000) of the
20 Financial Code.

21 (2) In enacting this subdivision, it is the intent of the Legislature
22 that its provisions shall not adversely affect the implementation
23 of, or prosecution under, any provision of the Penal Code.

24 (c) Any person who conducts business as a secondhand dealer
25 at any gun show or event, as defined in Section 478.100 of Title
26 27 of the Code of Federal Regulations, or its successor, outside
27 the jurisdiction that issued the secondhand dealer license in
28 accordance with subdivision (d) of Section 21641, may be required
29 to submit a duplicate of the transaction report prepared pursuant
30 to this section to the local law enforcement agency where the gun
31 show or event is conducted.

32 (d) (1) The Department of Justice shall recognize and accept
33 the plain text property descriptions generally accepted in the pawn
34 and secondhand industries provided by secondhand dealers, as has
35 been the longstanding practice of chiefs of police and sheriffs when
36 they receive paper reports from secondhand dealers. The
37 Department of Justice shall have the continuing duty to encode
38 the plain text property descriptions received by pawnbrokers and
39 secondhand dealers for law enforcement databases in order for
40 those descriptions to be useful for law enforcement purposes. Funds

1 collected pursuant to Section 21642.5 shall not be used by the
2 Department of Justice for the encoding or to train personnel to
3 encode these descriptions.

4 (2) With the consultation by the Department of Justice with
5 local law enforcement agencies and representatives from the
6 secondhand dealer businesses, pursuant to Resolution Chapter 16
7 of the Statutes of 2010, and upon the availability of sufficient funds
8 in the Secondhand Dealer and Pawnbroker Fund created pursuant
9 to Section 21642.5, the department shall promptly develop a single,
10 statewide, uniform electronic reporting system to be used to
11 transmit these secondhand dealer reports.

12 (3) (A) Except as otherwise provided in this section, any report
13 required of a secondhand dealer shall be transmitted by electronic
14 means.

15 (B) Until the date that the Department of Justice implements
16 the single, statewide, uniform electronic reporting system described
17 in paragraph (2), each secondhand dealer may continue to report
18 the information required by this section under the reporting
19 categories described in paragraph (1) in paper format on forms
20 approved or provided by the Department of Justice. Chiefs of
21 police and sheriffs continuing to receive paper forms shall also
22 continue to recognize and accept the plain text property
23 descriptions generally recognized in the pawn and secondhand
24 industries.

25 (C) On and after the date that the Department of Justice
26 implements the single, statewide, uniform electronic reporting
27 system described in paragraph (2), each secondhand dealer shall
28 electronically report using that system the information required
29 by this section under the reporting standard described in paragraph
30 (1), except that for the first 30 days following the implementation
31 date, each secondhand dealer shall also report the information in
32 paper format as described in subparagraph (B).

33 (D) Unless specifically identified in this section, the Department
34 of Justice, chiefs of police, and sheriffs shall not require a
35 secondhand dealer to include any additional information concerning
36 the seller, the pledger, or the property received by the secondhand
37 dealer in the report required by this section.

38 (E) The single, statewide, and uniform electronic reporting
39 system required by this chapter shall be implemented and operated
40 in compliance with the Administrative Procedure Act (Chapter

3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In implementing and operating the single, statewide, and uniform electronic reporting system required by this chapter, the Department of Justice, chiefs of police, and sheriffs shall comply with Sections 21637 and 21638. Notwithstanding any other law, the Department of Justice shall not take any action with respect to the implementation, operation, or maintenance of the electronic reporting system required by this chapter by adoption of an emergency regulation.

(F) On or before July 1, 2017, the Department of Justice shall convene a meeting with the Department of Technology to discuss issues pertaining to any proposed changes or upgrades to the single, statewide, and uniform electronic reporting system required by this chapter. The Department of Technology may provide technological assistance for ongoing improvements, updates, or changes to the single, statewide, and uniform electronic reporting system required by this chapter, as requested.

(4) A coin dealer shall report the information required by this section under the reporting standard described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item.

(5) For purposes of this subdivision, “item” shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, “item” shall mean that commonly accepted grouping.

(6) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of paragraph (7) of subdivision (a).

(e) Nothing in this section shall be construed to exempt a person licensed as a firearms dealer pursuant to Sections 26700 to 26915, inclusive, of the Penal Code from the reporting requirements for the delivery of firearms pursuant to Sections 26700 to 26915, inclusive, of the Penal Code.

SEC. 3. Section 21628.1 of the Business and Professions Code is repealed.

1 SEC. 4. Section 21630 of the Business and Professions Code
2 is repealed.

3 SEC. 5. Section 21630 is added to the Business and Professions
4 Code, to read:

5 21630. (a) A secondhand dealer shall electronically transmit
6 to the Department of Justice's single, statewide, uniform electronic
7 reporting system on the date of transaction or, if not then possible
8 due to an electrical, telecommunications, or other malfunction, as
9 soon as reasonable thereafter, the report of acquisition of tangible
10 personal property as required by Section 21628.

11 (b) Notwithstanding Section 21628, submission of a tangible
12 property acquisition report is not required if the report of an
13 acquisition of the same property from the same customer has been
14 submitted within the preceding 12 months.

15 (c) If the electronic reporting system operated by the Department
16 of Justice has not been implemented in the jurisdiction where the
17 secondhand dealer is located, the report shall be submitted to the
18 chief of police of the city or his or her designee within the territorial
19 limits of the incorporated city in which the secondhand dealer is
20 located. If the transaction takes place outside the territorial limits
21 of an incorporated city in which the secondhand dealer is located,
22 the report shall be submitted to the sheriff of the county or his or
23 her designee.

24 SEC. 6. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to make the single, statewide, uniform electronic system
29 a cost savings for secondhand dealers and pawnbrokers, the plain
30 text property descriptions historically utilized by these industries
31 must be accepted by the Department of Justice, just as these plain
32 text descriptions have historically been accepted by chiefs of police
33 and sheriffs.

34 Further, to protect the integrity of law enforcement databases,
35 it is necessary to specify that only trained law enforcement
36 personnel shall input classification codes of property reported by
37 these businesses, not the businesses themselves.